IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 155 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

KANUBHAI M PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioners

Mr.M.A.BUKHARI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/08/2000

ORAL JUDGEMENT

1. List has been revised twice, none appeared for the Revisionists. Shri M.A.Bukhari, learned A.P.P. has been heard and the impugned order has been examined.

2. Brief facts are that a composite charge sheet was submitted against the five revisionists under Sections 332, 147, 143, 149, 506(2) and 186 of the Indian Penal Code and Section 3(1)(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act"). Cognizance was taken by the learned Additional Sessions Judge, Vadodara. In that Court an application ex.8 was moved by all the revisionists that they are entitled to be discharged under Section 3(1)(X) of the Act. The said application was considered by the learned Addl. Sessions Judge. In his view the accused Nos.1 to 3 in the charge-sheet did not belong to Scheduled Caste and Scheduled Tribe. They had entered in the office of the complainant and with intention to humiliate the complainant the accused Kanu Mangal caught hold of the complainant from behind the chair, accused Nishar Ahmed and Vinu Khushal gave kick and fist blows to the complainant on his hand and chest and threatened to kill him. The incident took place in the Loco Yard Office where the complainant was working. Accused Nos.4 & 5 Vinu Khushal Chauhan and Kantilal Dahyabhai Makwana belong to Rohit community, which according to the Court below, belong to the Scheduled Caste. In view of Section 3(1) of the Act, according to the Court below, these two accused could not be prosecuted under Section 3(1)(X) of the Act. Regarding other accused Nos.1 to 3 the view taken by the Court below was that the incident took place in Loco-yard which was a public place and in any case it was a place within public view hence these three accused, not belonging to Scheduled Castes, were liable to be prosecuted under Section 3(1)(X) of the Act. As such with this finding the application of the accused Nos.4 & 5 was partly allowed, whereas the application of accused Nos.1 to 3 was rejected. Acting under Section 227 of the Code of Criminal Procedure, the Court below proceeded to try accused Nos.1 to 3 under various sections of the Indian Penal Code mentioned above as well as under Section 3(1)(X) of the Atrocities Act. For accused Nos.4 & 5 the observation of the Court below has been that these accused can be tried by competent Court under Sections of the Indian Penal Code mentioned aforesaid. It is this order which is under challenge in this Revision.

3. After going through the impugned order I do not find any illegality or infirmity therein. Section 3(1)(X) of the Act opens with the words whoever not being a member of Scheduled Caste or Scheduled Tribes commits acts mentioned in Sub-clauses (i) to (xv) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five

years and with fine. It is, therefore, clear that offence committed by a person not being member of scheduled caste and scheduled tribe is punishable under Section 3(1) of the Act. On the other hand, if such offence is committed by persons belong to the scheduled caste and scheduled tribe they cannot be prosecuted and punished under this section. The finding of the court below is that the accused Nos.4 & 5 belong to the scheduled Castes and as such they were rightly discharged acting under Section 227 of the Cr.P.C., for the offence punishable under Section 3(1)(x) of the Act.

4. Regarding accused Nos.1 to 3 the view taken by the Court below does not seem to be illegal or incorrect. Section 3(1)(x) of the Act provides that whoever not being a member of a Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. The words used in Section 3(1)(x) of the Act are intentionally insulting or intimidating or humiliating the member of Scheduled Caste or Scheduled Tribe in any place within public view which has been made punishable. Locoshed or Locoyard is not prohibited place. Even person belonging to other community employed in the railway can visit Locoshed or Locoyard. Consequently this was a public place and if offence was prima facie committed at such a place there was prima facie evidence to proceed against the accused Nos.1 to 3 under Section 3(1)(x) of the Atrocities Act.

5. In the result I do not find any merit in this revision Application, which is hereby dismissed.

sd/-

Date : August 17, 2000 (D. C. Srivastava, J.)

sas